IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Anand Giri. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 358/2003
against the order dated 25-2-2003 passed
by the Addl. Sessions Judge No.2, Jodhpur,
in Criminal Revision No. 71/2002.

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Date of Order: October 03, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.R. Choudhary, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the non-petitioner No.2 though served.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 25-2-2003 passed by the Additional Sessions Judge No.2, Jodhpur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 71/2002, whereby the revision petition filed by the petitioner against the order dated 25-9-2002 passed by the Additional Chief Judicial Magistrate, Bilara (for short, "the trial Court" hereinafter), was dismissed.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. No one appears for the non-

petitioner No. 2 though served.

It is contended by the learned counsel for the petitioner that a false case was instituted by the complainant/non-petitioner No.2 against the present petitioner who is the maternal uncle of the wife of the complainant/non-petitioner No.2. Learned counsel for the petitioner has invited my attention to the statements of Smt. Vimla W/o complainant/non-petitioner No.2 Moti Giri and Sayar Puri, the brother of the complainant. After investigation, the police filed a negative final report on the ground that no such occurrence has taken place, whereas the petitioner, being a teacher and a relative of the complainant, had advanced a sum of Rs.5000/- to the complainant for the medical treatment of complainant's wife. The petitioner demanded the amount advanced to the complainant; however, the complainant/non-petitioner No.2 failed to pay the advanced amount and in order to avoid payment ofRs.5000/- which was taken as loan by the complainant from the petitioner, a false case has been instituted by the complainant against the petitioner.

I have carefully gone through the statements of the complainant, his brother Sayar Puri and wife Smt. Vimla. From the case, as set up by the complainant, on the relevant date of occurrence, he along with his wife was present in the house and the occurrence took place at 12:00 in the night. Smt. Vimla,

the wife of the complainant has stated that no occurrence took place; on the contrary, she stated that a false case has been instituted by the complainant against her maternal uncle for the reason that despite repeated requests, the complainant failed to returned the loan amount of Rs.5000/- to the petitioner and, therefore, in order to pressurize the petitioner and not to return the loan amount, a false case was instituted against the petitioner.

From the statement of Sayar Puri, it appears that he was not present at the scene of the occurrence. His statement is based on hear-say. He had not seen the occurrence, nor he saw the petitioner committing the house trespass.

It is highly impossible that if a person commits the house trespass but the wife of the complainant would not have seen him. It is the case of the complainant himself and he and his wife Smt. Vimla were in the house. Even if the evidence collected by the police is taken as a whole, in my view, there is no ground to proceed against the petitioner for the offence under Section 457 IPC. Keeping in view the statements of Smt. Vimla and other witnesses recorded by the police during investigation, in my view, the trial Court fell in error in not accepting the negative final report filed by the police and erred in law and on facts in taking cognizance of the offence against the petitioner. The Revisional Court also committed illegality in not considering

the matter in a right perspective. Therefore, the impugned orders passed by the courts below cannot be sustained.

Consequently, the criminal miscellaneous petition is allowed. The impugned orders dated 25-9-2002 and 25-2-2003 passed by the trial Court and the Revisional Court respectively, are set aside. The proceedings against the present petitioner stands quashed.

(H.R. PANWAR), J.

mcs